

HOUSE BILL 1159
By McDonald

AN ACT to amend Tennessee Code Annotated, Title 11, Chapter 4 and Title 69, Chapter 1, to enact the "Tennessee Forest Resources Conservation Act of 2003".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 11, Chapter 4, is amended by adding Sections 2 through 13 of this act as a new, appropriately designated part.

SECTION 2. The title of this act is, and may be cited as the "Tennessee Forest Resources Conservation Act of 2003".

SECTION 3. The Tennessee general assembly finds that:

(1) Tennessee forests are an invaluable asset and vital to our citizens. Our forests provide many benefits, including forest products and jobs and employment related to outdoor recreation and tourism thus benefiting the state's economy.

Tennessee forests are critical to the protection of water quality, soil protection and erosion prevention, flood control, air quality, wildlife habitat and native biological diversity, and the state's scenic beauty. Our forests support the quality of life of present and future generations.

(2) The state of Tennessee has a substantial interest in maintaining healthy biodiverse forests that are managed with sustainable forestry practices. This act seeks

to assure that businesses that rely on mature hardwoods, such as sawmills, cabinetry and furniture manufacturing, hardwood flooring and paneling and hardwood veneers, will be able to continue production of such value-added products. Over-harvesting and excessive conversion of Tennessee hardwood forests to softwood or pulpwood is not in the state's interest.

(3) In spite of evidence of over-cutting and impending wood shortages in the south, chipmills continue to proliferate without regulation. The economic and environmental resources which forests provide must be sustained for the future by controlling the rate of extraction of forest resources.

(4) This part is enacted to ensure forest integrity and sustain timber resources in Tennessee for the long-term, and to create a system of permits for the establishment or expansion of high-volume chipmills. These chipmills rely upon highly mechanized clear-cutting of large acreage annually. This harvesting method removes virtually all forest canopy cover. The provisions of this part shall be liberally construed and applied to effectuate these ends as remedial legislation.

SECTION 4. For the purposes of this act:

(1) "Chipmill" means a mobile or stationary facility that converts timber to chips;

(2) "Commissioner" means the commissioner of the department of environment and conservation or the commissioner's designee;

(3) "Drain area" means the area in which timber is being, has been, or will be harvested;

(4) "Landowner" means a person who owns title to land surface;

(5) "Operator" and "Owner" as used in this part means "Operator" and "Owner" as used in the context of silvicultural activities as defined in Tennessee Code Annotated, Section 69-3-103. "Owner" includes a person who has purchased timber for harvest or

who owns timber that has been legally separated from the land through a deed transaction.

(6) "Person" as used in this part means "Person" as defined in Tennessee Code Annotated, Section 69-3-103.

(7) "Pulpwood" means trees severed from the ground, both hardwood and softwood, whether in whole or in part, that are ground or chipped and used to manufacture wood products, artificial fiber, or paper products; and

(8) "Timber harvesting" means the cutting of timber, the removal of timber, the construction of roads or trails, or the alteration of existing roads or trails, and all other surface disturbances associated with the cutting or removal of timber.

SECTION 5.

(a) The commissioner shall exercise the following authority and powers:

(1) Administer and enforce the provisions of this part and all rules and regulations and order promulgated thereunder;

(2) Promulgate general rules and regulations to accomplish the purposes of this part;

(3) Conduct such investigations or inspections as the commissioner may deem necessary to ensure compliance with any provision of this part;

(4) Issue permits and registrations as provided by this part;

(5) Order the suspension or revocation, or both, of any registration or permit and issue orders and impose penalties as provided in subsection (b) for any failure to comply with any provision of this part or of the terms or conditions of any registration or permit;

(6) Order the immediate cessation of any operation or facility that is started or continued without a registration or permit as required by the provisions of this part; and

(7) Institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued in carrying out the provisions of this part.

(b)

(1) The commissioner shall adopt a schedule of civil administrative penalties to be applied for violations of this part including failure to reregister, failure to obtain or renew a permit where required, or violations of a permit issued under this part, which includes violations of the terms or conditions of any permit and acquisitions which exceed the limitations on pulpwood usage specified in the permit.

(2) If the commissioner believes that a facility is in violation of the limits on maximum tonnage of pulpwood or is taking pulpwood from counties not designated in the permit, the commissioner may order the facility to cease and desist acquisitions of pulpwood or impose such limits on acquisitions as the commissioner finds appropriate to assure compliance with the permit and with the limitations on pulpwood usage specified in the permit.

(3) The commissioner shall seek to recover from a violator all costs and expenditures incurred by the department in connection with enforcement actions under this section.

(4) Orders of enforcement or for civil penalties shall be subject to appeal and review as provided for contested cases under the Uniform Administrative Procedures Act, title 4, chapter 5.

SECTION 6.

(a)

(1)

(A) Any person operating any chipmill or other facility that uses wood chips as a primary material to produce any product, with the capacity to use fifty thousand (50,000) tons of pulpwood or more in the calendar year preceding the effective date of this part, shall reregister the facility as required by this section. The chipmill or facility shall rereregister annually unless the chipmill or facility is granted a permit under this part.

(B) Any person operating any log staging, log or chip transfer facility or log loading operation that received or transported fifty thousand (50,000) tons or more of whole logs or chips destined for chipmills or other facilities using pulpwood, in the calendar year preceding the effective date of this part, shall reregister the facility as required by this section. The facility or operation shall rereregister annually unless the facility or operation is granted a permit under this part.

(C) The application for registration or re-registration shall specify the location and ownership of the mill, facility, or operation and, based upon a certification by the applicant, the maximum capacity and actual usage of pulpwood in the preceding calendar year. The application, to be developed by the commissioner, will be in such form and contain such other information as may be specified by the commissioner.

(D) Upon receipt of a fully and properly completed application for registration, together with the required fee, the mill, facility, or operation shall be reregistered and may operate as specified in the registration. Any change in the ownership or location of the mill, facility, or operation shall be reported to the commissioner in writing within thirty (30) days following the change.

(2) Any person wishing to undertake the following projects or actions shall apply for a permit:

(A) Any proposed chipmill, or other facility that uses wood chips as a primary material to produce any product, that will have the capacity to use eighty thousand (80,000) tons of pulpwood or more in a year.

(B) Any chipmill or facility proposing to increase its capacity to use or its usage of pulpwood if the total proposed capacity would allow the use of eighty thousand (80,000) tons of pulpwood or more in a year.

(C) Any reregistered chipmill or facility which used eighty thousand (80,000) tons of pulpwood or more in the year 2001 or 2002, and proposing to increase its capacity to use or its annual usage of pulpwood by fifteen thousand (15,000) tons or more.

(D) Any proposed staging, log or chip transfer facility, or log loading operation that will receive or transport over fifty thousand (50,000) tons or more of whole logs or chips in a year destined for chipmills or other facilities using pulpwood.

(E) Any chipmill or facility proposing to increase its capacity to use, or its usage of, pulpwood beyond an amount authorized by an existing permit under this subsection or intending to accept timber from a county not identified in an existing permit under this subsection.

(b) Information required on a permit application shall include, but not be limited to, the following:

(1) The name and address of the owner of the proposed facility or expansion;

(2) The existing or proposed location of the facility designated on a map by geographically referenced coordinates;

(3) The maximum pulpwood consumption capacity of the facility including chipped wood delivered to the facility from mobile and harvest site chipping equipment, if applicable, and the approximate number of acres in which harvesting will result in the removal of substantially all forest canopy cover. Capacity may be reported in terms of tons, cords, or board feet of roundwood. The diameter classes and grade of trees by species, and the approximate percentage mix of species to be used and the impact on the residual stand shall be specified;

(4) The projected life of the facility;

(5) The projected employment at the facility;

(6) A list of all required permits for air and water pollution which will be required or have been granted;

(7) A map of the area from which trees will be harvested to supply the facility. With the facility at the center, concentric circles in twenty (20) mile increments are designated "drain areas." The outermost circle shall represent the outermost limit from which the facility will be supplied with timber. Each drain area and proposed harvest area, if known, shall be identified on the map;

(8) The supply of timber as known to the applicant and the annual harvest for each drain area required to supply the facility at maximum production. This information shall be stated separately for counties within Tennessee and counties in other states. Timber supply information shall exclude timber which is unavailable for harvest because it is owned or controlled by another industrial forest owner; is held in public ownership; is located on soils or slopes which should not be disturbed or left unprotected by removal of forest cover under United States resource conservation service soil conservation standards or federal or state water pollution prevention standards; should be left to protect

riparian areas under best-management practices; may not be harvested due to land use controls or plans; or is otherwise unavailable for harvest; and

(9) Such other information as the commissioner shall specify.

SECTION 7.

(a) The commissioner shall send notification regarding applications filed pursuant to this part within ten (10) days of receipt of an application for a permit to each member of the public and interested agencies who have requested such information. The commissioner shall require the applicant to publish a brief notice that an application for a permit is to be reviewed by the commissioner. The notice shall be in a form approved by the commissioner and shall be published in one (1) newspaper of general circulation in each county from which forest resources will be drawn if the permit application is approved. Notices shall provide a summary of the information specified in Section 6 and such other information as the commissioner may require. The notice shall state how the application and related materials may be examined, how public comments may be submitted, and the deadline for receipt of such comments. Notices of permit applications shall be posted on the internet webpage maintained by the department of environment and conservation.

(b) Comments on the permit application may be submitted within thirty-five (35) days following the date of mailing of the notice of application under subsection (a). The commissioner shall respond in writing to written comments at the time the permit is approved or denied. This response may be in the form of an addendum to the document that grants or denies a permit. Copies of the grant or denial of the permit and response to comments shall be provided to all persons who have commented.

(c) The commissioner shall give public notice and hold a public hearing on any permit application in any case in which there is sufficient public interest.

SECTION 8.

(a) Upon receipt of a permit application, the commissioner shall perform a forest resource review to determine whether there are sufficient forest resources in the drain area or areas to support the proposed facility or expansion of a facility, taking into account the drain area usage and potential usage of forest resources by existing wood-using facilities. The drain area shall be calculated on the maximum capacity of each wood-using facility which sources from the drain area of the proposed facility, including wood-using facilities located outside of Tennessee.

(b) The commissioner of environment and conservation's natural heritage program and water quality division and such other staff as the commissioner may designate shall analyze the applicant's permit request with the cooperation and assistance of the Tennessee department of agriculture and the division of forestry, the department of labor and workforce development, the department of tourist development, the Tennessee wildlife resources agency, and such other public or private agencies as the commissioner of environment and conservation shall seek to involve.

(c) The commissioner shall prepare a forest resources review report. This report shall include, but not be limited to, an analysis of the effects of granting the permit requested which may arise from both the operation of the facility and the harvesting of timber necessary for operation of the facility, including cumulative effects. The report shall:

(1) Identify and evaluate potential negative impacts which the granting of the permit would have on available forest resources and existing and future consumption by other wood-using industries within the projected drainage areas and evaluate the effect of the applicant's maximum consumption rate on the supply of timber and other forest products to existing industries, including producers of saw timber, furniture, cabinetry, hardwood flooring and paneling, hardwood veneers. and other value-added solid wood products.

(2) Identify and evaluate potential negative impacts which the granting of the permit would have on existing or planned outdoor recreation and/or tourism activities or businesses.

(3) Identify and evaluate potential negative impacts which the granting of the permit would have on the environment and public health and safety. These impacts include increased soil erosion and sedimentation, water quality or air quality degradation, fish and wildlife habitat loss, reduction in biological diversity, loss of unique native species including threatened and endangered species, degradation of wetlands, impacts on roads and highways from transportation of materials to or from such facilities, and impacts from the operation of facilities which may discharge wastes or pollutants or use toxic or injurious chemicals or from other materials or methods in the manufacturing process.

(d) A forest resource review may be based upon the review and analysis of existing data and information. Nothing in this part shall be construed to require the collection of additional field data in the course of the preparation of a report. The report may consider the most recent United States Forest Service Forest Inventory data and the Southern Forest Resource Assessment. The department of environment and conservation shall solicit other data and the department shall consider other available data concerning the amount or rate of growth, removal, and other factors and impacts to be addressed in a forest resource review report and the permit application process.

(e) Forest inventory data and estimated timber supply and availability shall be adjusted to reflect the availability of timber for harvest. Such adjustments shall use appropriate analytical models, including but not limited to, those used by the United States forest service which are capable of being applied to existing data. To the extent data and methods are available, the adjustments shall provide for timber which is unavailable for harvest because it is held in public ownership, is within or part of an

official designated natural resource or historic site, is located on soils or slopes which should not be disturbed or left unprotected by removal of forest cover under soil conservation standards, must be left to protect riparian areas under best management practices, may not be harvested due to land use controls or plans, is unavailable as shown by information concerning landowner objectives and attitudes, or is otherwise unavailable for harvest. The report shall also consider reports and data from the University of the South and other academic sources which quantify or describe the changes, conditions, and extent, and depletion of forests on the Cumberland Plateau or elsewhere in Tennessee when such information is available.

SECTION 9.

(a) Every permit granted shall specify the maximum tonnage of pulpwood which may be consumed by the permitted facility and the counties in Tennessee from which pulpwood may be harvested for the facility based upon the representations made in the permit application. Every permit granted shall be for period of two (2) years. Permits may be renewed for successive two (2) year periods as provided in subsection (f).

(b) The commissioner shall deny the permit if the commissioner determines that insufficient forest resources exist for operation of the facility while assuring sustainable forests for all other purposes. If the commissioner finds that sufficient forest resources exist to grant the permit but there are adverse impacts identified by the study, the permit may be granted with conditions to mitigate the impacts of the granting of the permit.

(c) Any person denied a permit or granted a permit with conditions pursuant to this section may secure a review of such denial or conditions by filing with the commissioner a written petition setting forth the grounds and reasons for the appeal and requesting a hearing. All such appeals shall be conducted in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5. If a petition for appeal of a permit denial or appeal of conditions attached to a permit is not filed within thirty (30)

days after the date the denial or permit with conditions is issued, the applicant shall be deemed to have consented to the denial or permit with conditions and the commissioner's decision shall become final.

(d) Any person who has submitted comments under section 7 may appeal if aggrieved by the decision of the commissioner to grant a permit or to grant a permit with conditions. The appeal shall be filed within thirty (30) calendar days following notice of the commissioner's decision which shall be included in the commissioner's response to comments. The hearing officer may stay the grant of a permit if it appears likely that the permit should not have been granted under the provisions of this part. Any aggrieved person shall have standing to appeal the decision of the commissioner as a matter of law. All such appeals shall be conducted by a hearing officer designated by the commissioner in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5.

(e) Any final order or determination by the commissioner's hearing officer under this section shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5.

(f) An application for a permit renewal shall be made not less than forty-five (45) days preceding the expiration of an existing permit. The application to renew a permit shall have such of the information specified in Section 6(b) as the commissioner may require and be processed as specified in Section 7. Impacts listed under Section 8 identified since the completion of the forest resources review report shall be considered at the time of application for a renewed permit, but no forest resources review or report shall be required unless the commissioner finds that significant or substantial changes in forest resources or impacts have occurred which require the preparation of a new report so that the terms and conditions of a permit may be modified to respond to changed circumstances. No renewal of a permit shall allow an increase in capacity or the

consumption of pulpwood which would otherwise require a separate permit application under the provisions of Section 6(a).

SECTION 10.

(1) Each application for registration or reregistration under Section 6(a) shall be accompanied by a fee set by the commissioner. The commissioner may adopt a sliding schedule of fees relating to the volume of pulpwood usage and such other factors as the commissioner deems appropriate. The commissioner shall set a fee or a schedule of fees sufficient to defray all the costs of the department's operations under this part apart from the costs of permit processing activities to be defrayed by fees which accompany applications for permits under Section 6(b) or re-applications under Section 9(f).

(2) Each permit application under Section 6(b) shall be accompanied by a fee sufficient to defray all of the costs of the permitting process, including the forest resource study. Each application for renewal of a permit under Section 9(f) shall be accompanied by a fee sufficient to defray all of the costs of the permitting process required by Section 9(f), including a forest resource study if a study is required by the commissioner in the course of reviewing an application of renewal of a permit. The fee for renewal of a permit under Section 9(f) may also include an amount to defray a portion of the costs of the department's monitoring and enforcement operations under this part.

(3) The commissioner shall specify the fees required under this part by regulations adopted in compliance with the Uniform Administrative Procedures Act, title 4, chapter 5. The initial schedule of fees, and procedures for applications, registration and permits may be specified in public necessity regulations to allow the immediate implementation of this part.

SECTION 11. The commissioner shall enter into such interagency agreements with the department of agriculture and the division of forestry that may be necessary to effectuate this act. The department of agriculture and the division of forestry shall coordinate all programs

concerning forestry, soil and water protection and conservation and otherwise actively cooperate with the department of environment and conservation in carrying out the policies of this act.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. The commissioner is directed to file with the attorney general proposed rules to be published pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5, to implement the provisions of this act, within one hundred eighty (180) days of the effective date of this act.

SECTION 14. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2003, the public welfare requiring it.